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No. 91-1270

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In the Supreme Court of the United States

OCTOBER TERM, 1991

ANN RICHARDS, GOVERNOR OF TEXAS, ET AL.,
APPELLANTS

v.

LOUIS TERRAZAS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

KENNETH W. STARR
Solicitor General

JOHN R. DUNNE
Assistant Attorney General

JOHN G. ROBERTS, JR.
Deputy Solicitor General

DAVID O. SIMON
Acting Deputy Assistant Attorney General

THOMAS G. HUNGAR
Assistant to the Solicitor General

JESSICA DUNSAY SILVER
Attorney
Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTIONS PRESENTED

1. Whether the district court properly determined that the State of Texas's newly enacted redistricting plan required preclearance under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c.

2. Whether preclearance under Section 5 establishes the prima facie validity of a redistricting plan so as to preclude interim injunctive relief under Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973, absent extreme and unique circumstances.

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STATEMENT

This brief is filed in response to the Court's invitation to the Solicitor General to express the views of the United States.

1. In May 1991, the State of Texas enacted Senate Bill (S.B.) 31, which redistricted the State Senate in light of the 1990 census. Appellees Terrazas, Angelo, and Craddick promptly filed suit in federal district court challenging that plan. J.S. App. 27a. They alleged that the plan diluted minority voting strength in violation of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973. J.S. App. 27a, 38a. They also

alleged that the redistricting plan was the product of partisan gerrymandering in violation of the Equal Protection Clause of the Fourteenth Amendment. J.S. App. 27a, 34a. A three-judge court was convened to consider those claims. *Id.* at 27a.

Meanwhile, another group of voters (the *Mena* plaintiffs) had challenged S.B. 31 in state court. J.S. App. 27a. They alleged that the 1990 census undercounted minorities and that S.B. 31's use of census data in redistricting violated the Texas Constitution. *Id.* at 26a-27a. In August 1991, the state trial court ruled in favor of the *Mena* plaintiffs, and ordered the State to submit new redistricting plans using adjusted population data. *Id.* at 28a.

The parties to the state court proceeding then negotiated a compromise redistricting plan. J.S. App. 29a. In October 1991, the state trial court entered the settlement plan in a new suit styled *Quiroz* v. *Richards*. *Ibid.* The State promptly withdrew its previous submission of S.B. 31 to the Department of Justice for preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, seeking instead to have the Department preclear the new *Quiroz* plan. J.S. App. 29a. The Department of Justice precleared that plan in November 1991. *Ibid.*

Appellees—the plaintiffs in the federal court action —then filed a mandamus petition in the Texas Supreme Court challenging the *Quiroz* plan on state law grounds. J.S. App. 30a. In December 1991, the Texas Supreme Court granted the petition, concluding that the state trial court had abused its discretion by approving the *Quiroz* plan without first conducting an adversary proceeding. *Ibid.* The supreme court ordered the trial court's plan vacated. *Terrazas* v. *Ra-*

mirez, No. D-1817 (Tex. Sup. Ct. Dec. 17, 1991). As a result, the State was left without any valid redistricting plan to implement for the upcoming primary elections: S.B. 31 could not be implemented because it had never received Section 5 preclearance, and the *Quiroz* plan could not be implemented because it had been invalidated under state law.

2. In October 1991, the three-judge federal district court in this case had invited the parties to submit proposed interim redistricting plans to be used in the event that no state plan received Section 5 preclearance in time for the 1992 elections to proceed as scheduled. J.S. App. 29a-30a. On December 24, 1991, following the Texas Supreme Court's invalidation of the *Quiroz* plan, the three-judge court adopted its own interim redistricting plan for the State Senate. *Id.* at 49a. The court explained that it was compelled to act because "there are no legal plans reapportioning seats for election to the Texas * * * Senate that have been precleared by the [Department of Justice]." *Id.* at 31a. The court specifically noted that the *Quiroz* plan was not effective under state law, but was merely a non-binding alternative proposal that happened to have received preclearance. *Id.* at 39a.

The court concluded that the invalidation of the *Quiroz* plan left S.B. 31 as the clearest expression of the State's redistricting policy. J.S. App. 38a, 43a, 48a. Accordingly, the court examined appellees' claims that S.B. 31 violated Section 2 and the federal Constitution, and found that appellees had established a likelihood of success on their Section 2 claim. J.S. App. 38a-43a. Accordingly, the court entered its own "interim plan" for the March 10, 1992, primary elections that purported to remedy the perceived Section 2 violations. J.S. App. 19a. The court also extended

the filing deadline for the March 10 primary to January 10, 1992.

Judge Garwood dissented in part. He noted that the Governor had recently called the Texas State Legislature into special session to adopt a new redistricting plan. Judge Garwood would have expressly reserved for the State an opportunity to craft a lawful alternative to the court's interim plan, provided that the State was able to do so in a timely manner. J.S. App. 51a.

3. On January 8, 1992, during the special session called by the Governor, the Texas State Legislature enacted the *Quiroz* plan, now denominated S.B. 1, for use in the March 10 primary. J.S. App. 4a-5a; J.S. 6. In addition, the legislature enacted House Bill (H.B.) 2, which extended the filing deadline for State Senate candidates to January 17, 1992. H.B. 2 also provisionally altered the timing of the primary elections, retaining March 10 as the preferred date but setting April 11 as the fallback date in the event that the *Quiroz* plan had not been ordered into effect by the court by January 17. J.S. 6.

On January 9, 1992, the State filed a motion with the three-judge district court asking that court to vacate its December 24, 1991, interim plan and to allow S.B. 1 to take effect. J.S. App. 1a-2a. The State also submitted S.B. 1 to the Department of Justice for preclearance under Section 5. Mot. to Aff., App. C4.

The district court denied the State's motion on January 10, 1992. The court saw no indication that S.B. 1 "would enhance minority voting strength over that provided in [the] [c]ourt's interim plan." J.S. App. 5a. Rather, the court found that its own plan "provides a greater opportunity for all minority citi-

zens of the State of Texas to elect representatives of their choosing." *Ibid.*

The district court acknowledged the principle that a federal court must afford a State a reasonable opportunity to remedy defects in its redistricting plans before resorting to the remedy of a court-ordered plan. J.S. App. 2a. In this case, however, the court found that implementation of S.B. 1 and H.B. 2 at this late date "would result in postponement of the 1992 primary" and cause a "tremendous drain on the public treasury for the apparent benefit of so few." *Id.* at 8a. Although H.B. 2 purported to leave the March 10 primary date intact, the court observed that under Texas law the new redistricting legislation would not take effect until mid-April. *Id.* at 9a. The court also noted that the Department of Justice would be required to take a fresh look at the purpose and effect of S.B. 1 and H.B. 2 under Section 5 of the Voting Rights Act; the newly enacted plan was not automatically precleared simply because the Department of Justice had precleared the same map after the entry of the *Quiroz* settlement. J.S. App. 10a-11a. Moreover, the court noted that it would be required to hold a hearing to consider objections to the legality of S.B. 1, further delaying the time when a primary could occur. J.S. App. 11a. For these reasons, the court concluded that any effort to implement S.B. 1 would likely require postponing the scheduled primary elections until the summer of 1992. *Ibid.* This delay would cost approximately 10 to 15 million dollars, and might cause voter confusion and reduced voter turn-out, especially among Hispanic voters. *Id.* at 11a-12a.

Alternatively, the court held that even if S.B. 1 received preclearance under Section 5, the court would not approve its use as an interim plan. J.S. App.

12a-13a. The court explained that it "ha[d] already reviewed testimony and other evidence on the Senate's substitute plan during the December hearings and finds it fails to satisfy the Sec. 2 requirements of the Voting Rights Act." *Id.* at 13a.

Judge Garwood dissented. He indicated that he would have entered an order that provided for numerous alternative scenarios, dependent upon the receipt and timing of Section 5 preclearance. His order would have provided that if the Department of Justice objected to S.B. 1 by January 17, the court-ordered plan would be used on March 10. If the Department precleared S.B. 1 by January 17, the court would then pass on the legality of S.B. 1 under Section 2; if the court found the plan to be lawful, it would be implemented for the March 10 election. If the Department did not preclear or object to the plan by January 17, Judge Garwood would move the primary elections to April 11. If S.B. 1 then received Section 5 preclearance and a favorable Section 2 ruling from the court prior to February 18, the April 11 election would be held under that plan. Otherwise, the April 11 election would be held under the court-implemented plan now in effect. J.S. App. 16a-17a.

The State applied to this Court for a stay pending appeal of the district court's order. *Richards* v. *Terrazas*, No. A-498. This Court denied the application. 112 S. Ct. 924 (1992).

4. In September 1991, the State had filed suit in the United States District Court for the District of Columbia, seeking a declaration that its various redistricting plans did not violate Section 5 of the Voting Rights Act. On February 5, 1992, the State moved for partial summary judgment in that case, asking the court to rule that the implementation of S.B. 1 would not violate Section 5. Mot. to Aff., App. C1.

The district court denied that motion. It held that S.B. 1 had not already been precleared by virtue of the Justice Department's preclearance of the *Quiroz* plan, and that S.B. 1 would have to be compared with the benchmark *Terrazas* court plan in order to determine whether S.B. 1 had any retrogressive effect. *Id.* at C6-C9. The court concluded that an evidentiary hearing would be required before any such determination could be made. *Id.* at C8. The court also held that an evidentiary hearing was required to determine whether the State enacted S.B. 1 with a discriminatory purpose. *Id.* at C7-C8, C10.

In March 1992, the Attorney General objected to S.B. 1. Supp. J.S. App. 1a-3a. The objection letter explained that the Attorney General was objecting because the three-judge court had concluded that S.B. 1 violated Section 2, and that ruling had not been vacated or reversed. J.S. App. 2a; see 28 C.F.R. 51.55(b)(2) (Attorney General shall withhold Section 5 preclearance when "a bar to implementation of the change is necessary to prevent a clear violation of amended Section 2").

DISCUSSION

The State of Texas contends that the district court had no authority under Section 5 to prevent implementation of S.B. 1 because the Attorney General had already precleared the identical *Quiroz* plan. The State further argues that a presumption of validity attaches to precleared plans, and that the district court therefore erred in precluding the State from implementing S.B. 1. Neither of those contentions warrants full briefing and argument.

1. a. Section 5 of the Voting Rights Act of 1965 provides that covered jurisdictions, including the

State of Texas,[1] may not implement "any * * * standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972," without first receiving judicial preclearance from the United States District Court for the District of Columbia or administrative preclearance from the Attorney General. 42 U.S.C. 1973c. To receive preclearance, a jurisdiction must show that its proposed change in election practices "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or [membership in a language minority group]." *Ibid.* In deciding whether a change has a discriminatory effect, the principal question is whether it is retrogressive, *i.e.*, whether it makes minority group members worse off than they were before "with respect to their effective exercise of the electoral franchise." *Beer* v. *United States*, 425 U.S. 130, 141 (1976); see *Lockhart* v. *United States*, 460 U.S. 125, 134 n.10 (1983).

Redistricting plans are changes in "standard[s], practice[s], or procedure[s] with respect to voting." See *McDaniel* v. *Sanchez*, 452 U.S. 130, 137, 138 (1981); *Wise* v. *Lipscomb*, 437 U.S. 535, 542 (1978) (opinion of White, J.); *United Jewish Orgs. of Williamsburgh, Inc.* v. *Carey*, 430 U.S. 144, 157 (1977) (opinion of White, J.); *Beer* v. *United States*, 425 U.S. at 133; 28 C.F.R. 51.13(e); see also *Presley* v. *Etowah County Comm'n*, 112 S. Ct. 820, 828 (1992). Accordingly, a State covered by Section 5 may not implement a new redistricting plan without first persuading either the United States District Court for

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[1] The preclearance requirement was extended to Texas in 1975. See 40 Fed. Reg. 43,746 (1975); *Lockhart* v. *United States*, 460 U.S. 125, 129 (1983).

the District of Columbia or the Attorney General that the new plan has neither a discriminatory purpose nor a retrogressive effect.

The State of Texas does not challenge these basic Section 5 principles. Rather, the State argues that because the S.B. 1 plan and the *Quiroz* plan are identical, and because the State had begun to implement the *Quiroz* plan after receiving preclearance, the S.B. 1 plan is not a change with respect to voting and is not retrogressive from the benchmark *Quiroz* plan. J.S. 10-12. Those arguments are insubstantial.

To determine whether there has been a change with respect to voting for purposes of Section 5, a court must compare the challenged practice with the one actually in effect at the time the jurisdiction became subject to the preclearance requirement. 42 U.S.C. 1973c; *Hathorn* v. *Lovorn*, 457 U.S. 255, 265 n.16 (1982); *United States* v. *Board of Supervisors*, 429 U.S. 642, 647 n.3 (1977); *Perkins* v. *Matthews*, 400 U.S. 379, 394-395 (1971); S. Rep. No. 295, 94th Cong., 1st Sess. 45 (1975) ("Section 5 freezes the electoral laws and procedures of [covered] jurisdictions as of November 1, 1964 or 1968 [or 1972]."). The State does not deny that S.B. 1 is different from the senatorial districting plan in effect in 1972, and thus Section 5 preclearance is required by the plain language of the statute.

The State contends, however, that S.B. 1 is not a change from preexisting state law because it merely codified the *Quiroz* plan. That contention is incorrect.[2]

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[2] It is also beside the point. Section 5 "in express terms reaches any standard, practice, or procedure 'different from that in force or effect on November 1, 19[72].'" *Perkins* v. *Matthews*, 400 U.S. 379, 394 (1971). The *Quiroz* plan, of course, was not "in force or effect" in 1972.

When the State enacted S.B. 1 in January 1992, the *Quiroz* plan was *not* the law of the State of Texas, since it had been ordered vacated by the Texas Supreme Court. J.S. App. 31a. Thus, S.B. 1 *did* constitute a change in the districting plan for the State Senate, and accordingly it was unquestionably subject to preclearance under Section 5. See 28 C.F.R. 51.12 ("Any change affecting voting, even though it * * * returns to a prior practice or procedure, * * * must meet the section 5 preclearance requirement.").

Nor did the Attorney General's preclearance of the *Quiroz* plan operate to preclear S.B. 1. Although the two plans are identical, the preclearance issues are much different. In preclearing a proposed change in voting practices and procedures, the Attorney General must consider whether the change has *either* the purpose *or* the effect of abridging the right to vote on account of race.[3] *City of Pleasant Grove* v. *United States*, 479 U.S. 462, 469 (1987); *City of Rome* v. *United States*, 446 U.S. 156, 172 (1980). The fact that the Attorney General determined in November 1991 that a redistricting plan approved by a *state court* did not have an impermissible purpose obviously sheds no light on the question whether a redistricting plan enacted by the *legislature* in January 1992 had such a purpose. Thus, the State was required to submit S.B. 1 for preclearance—as it did—and was not permitted to implement its new districting plan until

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[3] A change may have an impermissible purpose under Section 5 even in the absence of any impermissible effect. *City of Pleasant Grove* v. *United States*, 479 U.S. 462, 471 & n.11 (1987); *City of Richmond* v. *United States*, 422 U.S. 358, 378-379 (1975).

the Attorney General had expressed no objections or the 60-day period had expired.[4]

Moreover, because the S.B. 1 plan constituted a change with respect to voting that had not been precleared, the district court had authority under Section 5 to prevent the State from implementing that change unless and until preclearance had been obtained. Indeed, under this Court's decision in *Clark* v. *Roemer*, 111 S. Ct. 2096, 2101 (1991), the district court was required to follow that course. As this Court explained in *Clark*, "[i]f voting changes subject to [Section] 5 have not been precleared, the [Section] 5 plaintiffs are entitled to an injunction prohibiting the State from implementing the changes." *Ibid.*

b. The State contends in the alternative that the district court erred in imposing its own reapportionment plan rather than deferring to the legislature's reapportionment preferences as reflected in S.B. 1. See J.S. 13-14 (citing *Upham* v. *Seamon*, 456 U.S. 37, 40-41 (1982); *White* v. *Weiser*, 412 U.S. 783, 795 (1973)). That contention rests on an incorrect factual premise. At the time the district court imposed its plan, S.B. 1 had not yet been adopted, and thus it was obviously not entitled to deference as a legislative expression of reapportionment preferences.

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[4] The Department of Justice's contemporaneous determination that S.B. 1 is subject to Section 5 preclearance is "entitled to particular deference." *Dougherty County Bd. of Educ.* v. *White*, 439 U.S. 32, 39 (1978). See *City of Pleasant Grove* v. *United States*, 479 U.S. at 468; *NAACP* v. *Hampton County Election Comm'n*, 470 U.S. 166, 179 (1985); *United States* v. *Board of Comm'rs*, 435 U.S. 110, 131 (1978). On January 4, 1992, the Assistant Attorney General for Civil Rights concluded that "[a]ny plan enacted by the Texas Legislature [would] require[] submission under Section 5 of the Voting Rights Act * * * even if the Legislature passed a plan identical to the *Quiroz* Senate plan." Mot. to Aff., App. B2.

Moreover, the State's argument fails to acknowledge that S.B. 1 was of no legal force or effect even after its adoption by the legislature, because it had not received Section 5 preclearance. *Clark* v. *Roemer*, 111 S. Ct. 2096, 2101 (1991); *NAACP* v. *Hampton County Election Comm'n*, 470 U.S. 166, 175 n.19 (1985); *Wise* v. *Lipscomb*, 437 U.S. 535, 532 (1978) (opinion of White, J.); *Morris* v. *Gressette*, 432 U.S. 491, 497 n.8 (1977); *Connor* v. *Waller*, 421 U.S. 656 (1975) (per curiam). Under *Upham* v. *Seamon*, the lower federal courts are obligated to defer to a State's reapportionment preferences only "in the absence of a finding that the * * * [State's] reapportionment plan offend[s] either the Constitution or the Voting Rights Act." 456 U.S. at 43. Since S.B. 1 was presumptively invalid and unenforceable under Section 5 of the Voting Rights Act unless and until precleared, it was not entitled to deference.[5] Accordingly, the district court was free to adopt its own plan. See *Wise* v. *Lipscomb*, 437 U.S. at 542 (opinion of White, J.) ("Pending [Section 5] submission and clearance, * * * federal courts will at times necessarily be drawn further into the reapportionment process and required to devise and implement their own plans.").

The State's broader interpretation of the duty to defer to state redistricting preferences would have

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[5] For the same reason, appellants are incorrect in asserting (J.S. 17) that the district court should have deferred to the legislature's enactment of H.B. 2, which sought to change the filing period for, and date of, the primary election. Changes in candidate filing periods and election dates are subject to Section 5 preclearance. *NAACP* v. *Hampton County Election Comm'n*, 470 U.S. 166, 176-179 (1985); *Garcia* v. *Guerra*, 744 F.2d 1159, 1164-1165 (5th Cir. 1984), cert. denied, 471 U.S. 1065 (1985).

the effect of sanctioning an end-run around the requirements of Section 5. The district court obviously could not have applied S.B. 1 without first satisfying itself that S.B. 1 was valid under federal law. But this Court has made clear that federal district courts, other than the United States District Court for the District of Columbia, lack jurisdiction to consider whether unprecleared state election laws comply with the substantive requirements of Section 5. As the Court said in *NAACP* v. *Hampton County Election Comm'n*, 470 U.S. 166, 181 (1985), the district court was not in a position "to determine whether the changes at issue in this case in fact resulted in impairment of the right to vote, or whether they were intended to have that effect. That task is reserved by statute to the Attorney General or to the District Court for the District of Columbia." See also *Hathorn* v. *Lovorn*, 457 U.S. 255, 267 (1982); *McDaniel* v. *Sanchez*, 452 U.S. 130, 150 n.31 (1981); *Wise* v. *Lipscomb*, 437 U.S. at 542 (opinion of White, J.); *United States* v. *Board of Supervisors*, 429 U.S. 642, 646 (1977) (per curiam); *Perkins* v. *Matthews*, 400 U.S. 379, 385 (1971). Accordingly, it would have been error for the district court to decide whether S.B. 1 complied with Section 5, and thus the court could not defer to the legislative preferences expressed in that presumptively invalid state statute.

Nor did the district court err in declining to delay the implementation of its redistricting plan pending the State's attempt to obtain administrative preclearance of S.B. 1. The majority of the three-judge court found that further delay would prevent primary elections from being held as scheduled and require their postponement into the summer, with a potentially disruptive effect on voter turnout and on the voting

rights of Hispanics. J.S. App. 10a-12a. In light of those findings, which appellants do not challenge as clearly erroneous, and because all parties conceded that holding elections under the plan that predated the 1990 census would violate one person, one vote requirements, the district court did not abuse its discretion in imposing its own interim plan. See *Wise* v. *Lipscomb*, 437 U.S. at 540 (opinion of White, J.); *Burns* v. *Richardson*, 384 U.S. 73, 85 (1966).

2. The State also contends (J.S. 14-18) that administrative preclearance under Section 5 establishes the prima facie validity of a redistricting plan so as to preclude interim injunctive relief under Section 2 except in extreme and unique circumstances. As explained above, that question is not properly presented in this case, because S.B. 1 was never given administrative preclearance. In any event, the State's contention is devoid of merit.

By the express terms of Section 5, neither administrative nor judicial preclearance of a change in voting practices or procedures "shall bar a subsequent action to enjoin enforcement of" that change. 42 U.S.C. 1973c; see also 28 C.F.R. 51.49 ("The preclearance by the Attorney General of a voting change does not constitute the certification that the voting change satisfies any other requirement of the law beyond that of section 5."). Every court that has addressed this issue has rejected the notion that the Attorney General's failure to object provides a defense to a subsequent action challenging the validity of the precleared change.[6] Instead, it is undisputed that

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[6] See, *e.g.*, *Morris* v. *Gressette*, 432 U.S. 491, 506-507 (1977) ("Where the discriminatory character of an enactment is not detected upon [preclearance] review by the Attorney General, it can be challenged in traditional constitu-

"the * * * Attorney General's preclearance determination has no probative value," and that "[p]rivate plaintiffs are free to mount a *de novo* attack upon a reapportionment plan notwithstanding preclearance." *Major* v. *Treen*, 574 F. Supp. 325, 327 n.1 (E.D. La. 1983).[7]

In any event, the State's contention that administrative preclearance should insulate election-law changes from interim injunctive relief is wholly beside the point. S.B. 1 did not receive administrative preclearance, and thus the district court was obligated to prevent its implementation even under the State's view of the law. *Clark* v. *Roemer*, 111 S. Ct. 2096, 2101 (1991). As this Court has explained, "[t]he application of [Section 5] is not dependent on a showing that the [covered jurisdiction's] proposed plan is defective in any way." *McDaniel* v. *Sanchez*,

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tional litigation."); *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 549-550 (1969) ("Once the State has successfully complied with the [Section] 5 approval requirements, private parties may enjoin the enforcement of the new enactment * * * in traditional suits attacking its constitutionality."); *United States* v. *East Baton Rouge Parish School Bd.*, 594 F.2d 56, 59-60 n.9 (5th Cir. 1979); *Gunn* v. *Chickasaw County*, 705 F. Supp. 315, 321 (N.D. Miss. 1989) (preclearance under Section 5 does not preclude a Section 2 challenge); *Mississippi State Chapter, Operation PUSH* v. *Allain*, 674 F. Supp. 1245, 1261, 1262 (N.D. Miss. 1987) (same); *Martin* v. *Allain*, 658 F. Supp. 1183, 1200 (S.D. Miss. 1987) (same); *Major* v. *Treen*, 574 F. Supp. 325, 327 n.1 (E.D. La. 1983) (same).

[7] Any consideration of the preclusive effect of Section 5 preclearance must take into account the fact that the Department of Justice reviews thousands of Section 5 submissions annually. In 1991, for example, the Department received nearly 4,600 submissions requesting preclearance of over 19,000 election-law changes.

452 U.S. 130, 151 (1981). Thus, the district court acted properly in declining to give effect to S.B. 1 because it had not received preclearance, *regardless* of whether S.B. 1 complies with Section 2 of the Voting Rights Act.[8]

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[8] Because the district court was clearly correct in concluding that S.B. 1 was subject to the preclearance requirements of Section 5, we express no opinion concerning the court's contingent finding that S.B. 1 would be unenforceable under Section 2 of the Voting Rights Act, even if it were to become law. See J.S. App. 12a-13a. Moreover, that issue is not, in our view, "fairly included" within the questions presented by appellants in their jurisdictional statement. Sup. Ct. R. 14.1(a), 18.3. The effect, if any, of the district court's Section 2 finding on Section 5 preclearance is among the issues pending before the three-judge court of the United States District Court for the District of Columbia, and should be addressed there in the first instance.

CONCLUSION

The judgment of the district court should be summarily affirmed.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

JOHN R. DUNNE
Assistant Attorney General

JOHN G. ROBERTS, JR.
Deputy Solicitor General

DAVID O. SIMON
Acting Deputy Assistant Attorney General

THOMAS G. HUNGAR
Assistant to the Solicitor General

JESSICA DUNSAY SILVER
Attorney

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